92-781

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

GEORGE H. BAKER, SR. and BESSIE J. BAKER,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

GEORGE H. BAKER, SR.
BESSIE J. BAKER
Petitioners in propria persona
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QUESTIONS PRESENTED FOR REVIEW

Where a Utility Letters Patent is issued pursuant to United States Constitution Article 1, Section 8, Clause 8, and constitutes a secured absolute property right and all substantial bundles of rights are sold and transferred by the Inventor/Patentee under Title 35 U.S.C.A., Section 261, as a vested interest of personal property to a buyer/patentee by assignment for buyer benefit of utilization under an entire 1971 contract requiring payment of a realized fixed-in advance selling price of $1,000,000.00, being paid by installments within the 17 year life of patent, and the final installment becoming due in 1984, can a 1978 add-on tax of the Alternate Minimum Tax Act be applied retroactively to change the tax law as it existed in year of contract, and where a part of the 1971 contract with a vested interest to tax the final installment, despite law in effect in 1971 did not define such due and realized compensation returned for transfer and sale of all substantial bundle of rights to patent in character of an item of a "tax preference" and thus, not subject to any add-on tax.

Where contract by assignment was consummated in 1971 in sale and transfer of all substantial rights of patent, and payment of tax was made on the law as it existed in 1971, can the Internal Revenue Service retroactively levy an add-on tax on compensation returned to patentee-seller of his vested property right under the Alternate Minimum Tax Act enacted in 1978 without violating due process of law under Amendment V, United States Constitution, and take personal property from the Inventor and patentee vested interest in an entire contract, under seal.

Where the entire contract of assignment and transfer of all substantial patent rights was made in Illinois and Article 1, Section 16 of the Illinois Constitution provides: "No ex post facto law or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities shall be passed," does the Internal Revenue Service have the discretion under the Alternative Minimum Tax Amendment of 1978 to levy an additional or add-on tax on the final installment payment of $322,713.00 in 1984 of the 1971 assignment and contract which had been taxed in year one on return of an intangible capital asset, here a letters patent, and the tax paid in full under the law as it then existed in 1971 and wholly consistent for 13 consecutive years?

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C. Where the contract of assignment of patent rights was made in Illinois and Article I, Section 16 of the Illinois Constitution reads: "No ex post facto law or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities shall be passed," does the Internal Revenue Service have the power under the Alternative Tax Amendment of 1978 to levy retroactively an additional tax on the final installment of $322,713.00 in 1984 of the 1971 assignment contract which had been originally taxed on a capital asset and tax paid in full under the law as it existed in 1971 and consistent in all thirteen subsequent years ..... ii, 3

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IN THE

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GEORGE H. BAKER, SR. and BESSIE J. BAKER,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners, George H. and Bessie J. Baker Sr., respectively pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on May 18, 1992.

OPINION BELOW

The Order of the United States Court of Appeals for the Seventh Circuit is not reported. It is attached as Appendix A to this Petition.

JURISDICTIONAL STATEMENT

The June 18, 1992 Judgment and Order of the United States Court of Appeals for the Seventh Circuit (Appendix A) affirmed the decision of the United States Tax Court entered on March 26, 1991 (Appendix B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

Article 1, Sec. 8, Cl. 8 of the United States Constitution provides:

> The Congress shall have power . . . to promote the progress of Science and useful Arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

This is an appeal, pursuant to 26 U.S.C. Sec. 7482(a)(1) from the final decision of the United States Tax Court, Honorable James S. Halpern, entered on March 26, 1991. Jurisdiction of the United States Tax Court was invoked under 26 U.S.C. Sec. 7442. Notice of Appeal, dated June 11, 1991, was timely filed pursuant to 26 U.S.C. Sec. 7483 and Rule 13, Federal Rules Appellate Procedure.

Article 1, Sec. 9, Cl. 3 of the United States Constitution provides:

> No Bill of Attainder or ex post facto law shall be passed.

The Fifth Amendment declares, in pertinent part:

> No person shall . . . be deprived of . . . property, without due process of law.

The Ninth Amendment to the United States Constitution declares:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Tenth Amendment to the United States Constitution declares:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Article 1, Sec. 16 of the Constitution of the State of Illinois states:

> No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

35 U.S.C., Sec. 261, provides, in pertinent part:

> Subject to the provisions of this title, patents shall have the attributes of personal property.

26 U.S.C., Sec. 55(b)(1)(c) provides:

> (1) Alternative Minimum Taxable Income. The term "alternative minimum taxable income" means gross income—
>
> (c) increased by an amount equal to the sum of the tax preference items for—
>
> "(i) adjusted itemized deductions (within the meaning of Section 57(a)(1)), and
>
> "(ii) capital gains (within the meaning of Section 57(a)(9)).

STATEMENT OF CASE

Jurisdiction of the United States Tax Court was invoked under 28 U.S.C., Sec. 7442.

In 1967, George H. Baker, Sr., (Baker) was issued U.S. and Canadian Utility Letters Patent for his invention of discovery, disclosure of such by Application for patent on December 16, 1964, and embodiment of 9 Claims.

Baker sold, by assignment, all substantial interest in his patents to a willing buyer, Baker Drapery Corporation for selling price of 1 million compensation to be returned for the patent asset bargained for and to be paid in installments. The last installment, to discharge the obligation and payment in full of the fixed in advance selling price, was received by the Bakers in 1984, according to contract made in 1971. Baker reported that amount of $337,569 as 100% installment paid bearing to the selling price for patent sold in 1971 and timely paid full tax due, less consistent and allowed capital gain deduction of $193,628. The Bakers, on their joint tax return did not compute or pay any add-on Alternate Minimum Tax.

Instead, Petitioners claimed that the law in effect in 1971 at time and place of the consummated contract to sell and transfer inventor/patentee property rights to the buyer corporation/patentee by assignment (App. E) governed and controlled under *Wood v. Lovett*, 313 U.S. 262 and became a basic part of the 1971 agreement, and in full harmony within the distinct character of sale and transfer of a letters patent capital asset, and consistent over 13 remaining years of the useful life of patent and at termination of contract in 1984, prospectively con-

firmed by private letter ruling dated June 23, 1970 issued from the National Office of the IRS by John Littleton. (App. D). Petitioners contend that the Tax Court could not change the law as it was in 1971 by passing an alternative tax law of 1978 and retroactively applying it to a complete and entire contract in closed transaction in 1971 even though the final payment was received in 1984, satisfying the fixed in advance selling price for a capital asset, where here, vested property right of value in Letters Patent.

Furthermore, the case of *U.S. v. Darusmont*, 449 U.S. 292 holds that retroactive application of the alternative tax law may be made within the year 1978 but in effect by dictum holds that retroactive application to the contract in 1971 would be oppressive and take Petitioners' property without due process of law under Amendment V, U.S. Constitution. Petitioners contend that this deficiency levy of the Tax Court is void as a retroactive application of law of 1978 to an installment due in 1984 because the law as it existed at time and place the contract and all events have taken place in a closed transaction in 1971 did not have it as part of the Baker assignment agreement. Furthermore, the attempt to superimpose a 1978 alternative add-on tax impaired the 1971 contract.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10.1(c) sets forth, as a reason for granting certiorari, that a United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. The present case provides just such a question of first impression regarding the rights of patent holders, the impairment of contracts, and retroactive application of tax statutes.

In addition, the underlying premise upon which the Appellate Court's decision is based conflicts with the previous decisions of this Court. *See* Sup. Ct. R. 10.1(c).

Petitioner asserts he has sustained proof of these questions and under application of *Wood v. Lovett*, 315 U.S. 362 (1941); *U.S. v. Darusmont*, 449 U.S. 292, 66 L. Ed. 2d 513 (1981); as well as *Walker v. Whitehead*, (16 Wall) 83 U.S. 314 (1873) and requests the Court reverse the decision of the United States Court of Appeals for the Seventh Circuit to bring the law of this case into proper conformity with well-settled contract principles and constitutional precedent.

Petitioners contend that the Seventh Circuit Court of Appeals and the Tax Court have ignored the application of the fundamental and well settled principle that law in effect at the time and place a contract is executed (in this case 1971) such law is made a part of that contract in as much if the laws were written into it and so constitutes the entire contract that controls and precludes any tax statute Congress later enacts and attempts to apply to an entire contract under seal and to do so wrongfully impairs that contract of assignment. To do this, violates and

destroys the security to inventors property right to their invention of discovery under Article 1, Section 8, Clause 8, of the U.S. Constitution and carves out a valued part of his vested property right in patent, taking away his due compensation retroactively contrary to all fairness which is truly basis in fact for due process of law.

Thus the inventor claims his secured right to his invention of discovery under U.S. Constitution, which is not a given privilege, but a claim of absolute right. Under Title 35 U.S.C. Section 261, issued letters patents have attributes of personal property and a vested property right of value, within limited time of the useful life, when transferred and sold by patentee by assignment in writing. This absolute vested right should not be impaired under the Impairment of Contract clause or under the Due Process of Law clause of Amendment V. Furthermore, under the adoption of Due Process of Law of Amendment XIV, U.S. Constitution, it cannot be abridged or destroyed as a violation of Article 1, Section 6, Illinois Constitution, and impairment of obligation of contract.

This case presents a basic fundamental question as to how far the Internal Revenue Service may go in impairing a lawful contract of assignment by application to an entire and complete contract, and to whether they can take the secured inventor's property interest in invention without due process of law under Amendment V, U.S. Constitution, when protection of that vested property right is secured for the limited time of 17 years by issue of patent. Hence this case allowing retroactive add-on taxation effects incentive to invent and progress of useful inventions for the welfare of the country and the public good.

Finally, to summarize effect of application of a retroactive statute we quote Vol. 4, Texas Law Review, pages 232-237:

> Fundamental arguments used against retroactive laws are that they are "a violation of fundamental principles," inconsistent with "the nature of republican and free governments," contrary to the "fundamental maxims of free government," not in accord "with sound legislation" and against the "fundamental principles of the social compact," violate "principles derived from the general nature of free governments," "repugnant to the common principles of justice and civil liberty," "absolute injustice," a violation of "natural right," against "the great principle of Eternal Justice," inconsistent with "the principles of general jurisprudence" and "monstrous."

Under Article 1, Section 8, Clause 8 of our U.S. Constitution, inventors claim a secured and absolute right to their invention of discovery and value that protection for the limited time of 17 years set by the Congress.

The Petitioner here possessed a valued and vested personal property right in the 1967 issue of Utility Letters Patent within the meaning of U.S.C. 35, Sec. 261. The vested nature of Petitioner's property interest invokes the due process of law guarantees enshrined by the Fifth and Fourteenth Amendments. The Petitioner is free and able to exchange and transfer his property rights for an entire contract bargained for and agreed to in 1971. Petitioner did just that, with the non-related buyer, Baker Drapery Corporation. Said entire contract was completed at that time and place, with no material terms of contract left open for variation in such closed transaction. The contracting parties themselves agreed that 1971 law could control and constitute the law of their private contract. An entire contract is complete when the

final agreement is made and executed, not when performance is finally completed. Recognizing an IRS authority to retroactively add-on tax provisions of an entire contract containing long-term transfers would reduce the contract to a speculative exercise subject to uncertainty and arbitrary collection action at any time throughout its performance. Without fixing the law applicable to the private contract into a set time, the material elements bargained for become malleable, and the agreement itself hopelessly illusory.

The retroactive 1978 Alternative Tax upon the Petitioner's vested property interest is actually a tax on capital in the nature of a void capital levy tax and not a tax on any "gains" no matter what the label, long or short. The 1984 final installment payment for $322,713.00 is inherently part of the fixed in advance selling price of $1,000,000.00 capital returned and for full consideration due in a closed transaction in the 1971 entire contract. Capital returned in exchange for all substantial bundle of rights to patent is nothing more than mutual consideration passing between the parties to contract which renders it valid and binding, i.e., *quid pro quo*. The final payment in 1984 to satisfy in full the consideration from an entire contract already complete in 1971 should not be subject to any add-on tax on capital gain when there were no capital gains.

That was, and has been, the intent of the contracting parties themselves all along. To hold otherwise is to eviscerate blackletter common law principles and well-settled constitutional law *stare decisis* defining a contract as the completion of agreement rather than the completion of performance. The IRS theory of this case trivializes the cardinal trait of a contract, i.e., the parties' mutual assent, by holding all long-term transfer provisions

of a contract hostage to any retroactive changes in law or policy, whether forseeable or not, that the IRS may desire to implement upon the taxpayers.

The contract law of *Wood v. Lovett, supra,* would be overruled *sub silentio* if this Writ were denied. An oppressive "capital levy" resulting from such inaction would foment inevitable disincentive for the natural person "to invent" and in turn effectuating corporate patentees, by assignment, who are requested to bargain for provisions including long-term transfers in proposed agreements. The unwise discouragement to U.S. Industry and to commerce by the impairment to contract created herein would be far more costly to national creativeness and productivity than any fiscal advantages derived from the deployment of this collection weapon to the IRS.

CONCLUSION

For the foregoing reasons, petitioners respectfully request this Honorable Court to grant this Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, and to reverse the ruling of the Court below.

Respectfully submitted,

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APPENDICES

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

AGENCY JUDGMENT – WITH ORAL ARGUMENT

Date: May 18, 1992

BEFORE:

Honorable RICHARD D. CUDAHY, Circuit Judge
Honorable FRANK H. EASTERBROOK, Circuit Judge
Honorable MICHAEL S. KANNE, Circuit Judge

No. 91-2822

GEORGE H. BAKER, SR. and BESSIE J. BAKER,
Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court
No. 12100-88

This cause was heard on the record from the United States Tax Court and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the decision of the United States Tax Court is AFFIRMED, with costs, in accordance with the decision of this Court entered this date.

(1064-041692)

[UNPUBLISHED ORDER NOT TO BE CITED
PER CIRCUIT RULE 53]

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued April 13, 1992
Decided May 18, 1992

Before
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. MICHAEL S. KANNE, Circuit Judge

No. 91-2822

George H. Baker, Sr. and Bessie J. Baker,
Petitioners-Appellants,

v.

Commissioner of Internal Revenue,
Respondent-Appellee.

Appeal from the United States Tax Court
No. 12100-88

ORDER

This is an appeal from a Tax Court judgment finding George and Bessie Baker liable for a deficiency and for additions to tax due to negligence. The facts are not disputed. In 1967, George Baker ("Baker") received U.S. and Canadian patents for a drapery support and accessory system he had designed. In 1971, Baker assigned his interest

in the patents to the Baker Drapery Corporation for $1 million, which was to be paid in installments. The last of the installment payments, representing $337,569, was received by the Bakers in 1984. They reported that amount as long-term capital gain on their 1984 joint tax return, claiming a net capital gain deduction of $193,628. The Bakers did not, however, compute or pay any alternative minimum tax for 1984.

In 1988, the Commissioner sent the Bakers a notice of deficiency. The Commissioner had determined that the Bakers' 1984 capital gain deduction was an item of tax preference and that they were therefore subject to the alternative minimum tax for 1984 in the amount of $39,816.[1] The alternative minimum tax provisions in effect for 1984 were enacted as part of the Revenue Act of 1978.

Congress originally adopted the alternative minimum tax "to remedy general taxpayer distrust of the system growing from large numbers of taxpayers with large incomes who were yet paying no taxes." *Okin v. Commissioner*, 808 F.2d 1338, 1342 (9th Cir.), *appeal dismissed and cert. denied*, 484 U.S. 802 (1987). In general, the alternative minimum tax is the amount by which the tentative tax computed under minimum tax rules exceeds the taxpayer's regular income tax. There is no need here to detail how the alternative minimum tax is computed; the Bakers do not challenge the Commissioner's computation under the 1984 alternative minimum tax. They argue in-

[1] The Commissioner concedes that it initially miscalculated the deficiency, which is actually $39,609 rather than $39,816.

stead that the 1984 minimum tax does not apply to their receipt of the final installment of the patent assignment.[2]

The Bakers argue that the law in effect in 1971 is embodied in the 1971 agreement assigning Baker's patents, so the installment payment received in 1984 (pursuant to that agreement) cannot be governed by a tax law enacted in 1978. The Bakers are incorrect. It is well settled that installment payments are subject to taxation according to the provisions of the law in effect at the time the installment is received. *Picchione v. Commissioner*, 440 F.2d 170, 172 (1st Cir.), *cert. denied*, 404 U.S. 828 (1971); *Snell v. Commissioner*, 97 F.2d 891 (5th Cir. 1938); *Estate of Kearns v. Commissioner*, 73 T.C. 1223, 1225 (1980); *Perry v. Commissioner*, 59 T.C.M. (P-H), ¶ 90,228 (1990). When a taxpayer decides, as Baker did in 1971, to defer the realization of gain by using the installment period, the taxpayer assumes the risk that the tax rate (and other provisions) might change. *Snell*, 97 F.2d at 893. Moreover, the result in the present case is precisely what Congress envisioned in enacting the new minimum tax of section 55. The Senate Finance Committee's report indicates that the new minimum tax provisions are to be effective for taxable years beginning after 1978 and that payments received after that year are subject to the new tax, even if such payments relate to installment sales that were consummated earlier. The report reads:

---

[2] Under the internal revenue provisions in effect for 1984, the Bakers' net capital gain deduction (as defined in 26 U.S.C. §§ 1202(a) & 1222) constituted a tax preference item. 26 U.S.C. 57(a)(9)(A). As a preference item, this amount had to be added to the taxpayers' adjusted gross income in computing the alternative minimum tax under 26 U.S.C. 55(b). The Bakers' net capital gain deduction of $193,628, had it been properly added, would have yielded alternative minimum tax liability of $39,609.

> In general, the provision is effective for taxable years beginning after 1978. . . . Thus, fiscal year taxpayers are to first be subject to the new minimum tax for their taxable year beginning in 1979.
>
> However, the provisions changing the effective date for the preferences for capital gains (to 70 percent of net capital gain) for purposes of the present law minimum tax is to apply for all sales or exchanges taking place after October 31, 1978.
>
> *For purposes of both effective dates payments received after the effective date with respect to pre-effective date installment sales are to be taxed under the new provisions applicable generally to sales made after the effective date.*

S. Rep. No. 1263, 95th Cong., 2d Sess. at 207 (1978), *reprinted in* 1978-3 C.B. (Vol. 1) 505 (emphasis added).

The Bakers suggest that the "retroactive" application of section 55 in this case is so harsh as to constitute a violation of due process. But there is nothing retroactive about taxing income received in 1984 under the law then in effect. Further, even if we found the taxation here retroactive in some sense, it would not be so oppressive as to violate due process. *See United States v. Darusmont*, 449 U.S. 292 (1981); *Welch v. Henry*, 305 U.S. 134, 147 (1938). As the First Circuit explained in *Picchione*:

> Taxpayer has no constitutional right to have all income flowing from his 1946 sale of the copyright taxed under the revenue laws in effect at that time regardless of when the income is received. Tax liability is not a contract. Nor has the government ever represented that future years would not bring changes in the tax laws. Such changes are as inevitable as taxation itself.

440 F.2d at 173 (citation omitted).

Finally, the Bakers refer to Congress's constitutional power to establish patent rights, apparently arguing that the fruits of those rights cannot be denied by taxation such as that imposed here. Even if Baker has a strong right to his patents, it does not entitle him to any particular tax treatment of a valid assignment of that right. The Bakers cannot seriously argue that the 1984 payment of $337,569 was not income received in that year. And under the Sixteenth Amendment to the Constitution Congress certainly has the power to tax that income. Any doubts about how Congress wished to tax installment sales are resolved by its acquiescence in the cases' consistent approach and by the applicable legislative history.

For the foregoing reasons, the judgment of the Tax Court is

AFFIRMED.

APPENDIX B

UNITED STATES TAX COURT

GEORGE H. BAKER, SR. and BESSIE J. BAKER,	)	
Petitioners,	)	
v.	)	Docket No. 12100-88
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

DECISION

Pursuant to the opinion of the Court filed December 18, 1990, and incorporating herein the facts recited in the respondent's computation as the finding of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1984 in the amount of $39,609.00; and

That there is an addition to the tax due from the petitioners, pursuant to I.R.C. § 6653(a)(1), for the taxable year 1984 in the amount of $1,980.00; and

That there is an addition to the tax due from the petitioners for the taxable year 1984, under the provisions of I.R.C. § 6653(a)(2), equal to 50 percent of the statutory interest due on the entire deficiency from April 15, 1985 to the date of assessment of tax, or, if earlier, the day of payment.

/s/ JAMES S. HALPERN
Judge

Entered: March 26, 1991

* * * * *

APPENDIX C

T.C. Memo. 1990-635

UNITED STATES TAX COURT

GEORGE H. BAKER, SR.,
AND BESSIE J. BAKER, Petitioners *v.*
COMMISSIONER OF
INTERNAL REVENUE, Respondent

Docket No. 12100-88. Filed December 18, 1990.

Held: That net capital gain deduction claimed by petitioners on their 1984 return is a tax preference item under section 57(a)(9)(A) for the purpose of computing their alternative minimum tax under section 55. Petitioners' liability for the alternative minimum tax is sustained. *Held further*: Petitioners are liable for additions to tax under section 6653(a)(1) and (2) for negligence.

George H. Baker, Sr., pro se.

John W. Duncan, Terry W. Vincent, and *Jeff P. Ehrlich,* for the respondent.

MEMORANDUM OPINION

HALPERN, *Judge*:* By the notice of deficiency dated February 29, 1988, respondent determined a deficiency in

* By Order of the Chief Judge, this case was reassigned to Judge James S. Halpern for disposition.

petitioners' Federal income tax for calendar year 1984 in the amount of $39,816,[1] together with additions to tax under section 6653(a)(1) and (2).[2] This case presents two questions: First, whether the net capital gain deduction claimed by petitioners for 1984 was a tax preference item under section 57 for the purpose of computing petitioners' alternative minimum tax under section 55, and, second, if we answer the first question in the affirmative and there is a resulting underpayment, whether such underpayment is due to petitioners' negligence or intentional disregard of rules or regulations so as to give rise to the additions to tax determined under section 6653(a)(1) and (2).

Following a dispute between the parties with regard to stipulations of facts proposed by each party, this Court ordered certain facts and evidence deemed accepted as established for purposes of this case. Subsequently, the parties submitted this case fully stipulated by the facts and evidence so deemed established. By this reference, such facts and evidence are incorporated into this opinion. We summarize below the pertinent facts.

BACKGROUND

Petitioners are husband and wife. They resided in Dunlap, Illinois, when they filed the petition in this case.

---

[1] Respondent since has stated that the correct deficiency is $39,609, not $39,816.

[2] Unless otherwise noted, all section references are to the Internal Revenue Code of 1954, as amended and in effect for the year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

In 1967, petitioner George H. Baker, Sr. (Baker), received U.S. patent No. 3,296,651 and Canadian patent No. 770,972, concerning a drapery support and related accessories conceived and developed by Baker (the Patents). In 1971, Baker assigned his interest in the Patents to the Baker Drapery Corporation (the Corporation) in consideration for $1 million, to be paid to Baker in installments. Baker previously had requested and received a ruling from respondent that, subject to the provisions of section 1231, any gain realized on the assignment to the Corporation of the Patents would constitute gain from the sale of a capital asset held for more than six months (i.e., long-term capital gain). Beginning in 1971, Baker received installments of the $1 million owed to him by the Corporation. Petitioners reported those payments under the installment method of accounting.

In 1984, Baker received the final payment due him from the Corporation, in the amount of $337,569. Petitioners reported the full amount as long-term capital gain on their joint U.S. Individual Income Tax Return for 1984 (line 9 of Schedule D). After including several other capital gain items relatively small in amounts, petitioners reported on their 1984 return a net long-term capital gain of $333,740 (line 19 of Schedule D) and a net capital gain of $322,713 (line 20 of Schedule D). The net capital gain resulted in a net capital gain deduction under section 1202 of $193,628 (line 22 of Schedule D). Petitioners neither included in their 1984 return any computation of the alternative minimum tax nor paid any such tax for 1984. Instead, petitioners computed and claimed an income tax refund for 1984 under the regular income tax provisions of section 1(a).

On February 29, 1988, respondent mailed to petitioners a notice of deficiency. In the notice, respondent deter-

mined that petitioners' capital gain deduction was an item of tax preference and that petitioners were subject to the alternative minimum tax for 1984 in the amount of $39,816, along with additions to tax for negligence pursuant to section 6653(a)(1) and (2). In his notice of deficiency, however, respondent incorrectly calculated the alternative minimum tax and the deficiency. On line 15 of Schedule 3 attached to respondent's notice, total items of tax preference are stated incorrectly as $194,664, rather than correctly as $193,628. Respondent, thus, should have determined a deficiency of $39,609, rather than $39,816. This Court notes that respondent has not recomputed the additions to tax under section 6653(a). If we hold for respondent with regard to the two questions at issue here, petitioners would be liable for a deficiency in the amount of $39,609 and for additions to tax properly computed pursuant to section 6653(a)(1) and (2).

DISCUSSION

Alternative Minimum Tax

No dispute exists as to the facts. Whether petitioners are liable for any alternative minimum tax is purely a question of law. The answer depends on whether the net capital gain deduction allowable to petitioners by section 1202(a) is a tax preference item under section 57(a) for the purpose of computing alternative minimum taxable income under section 55(b). If it is, then petitioners are liable under section 55(a) for the alternative minimum tax in the amount of $39,609. We hold that they are so liable.

Sections 55, 57, and 58 are applicable to 1984 imposed on individuals an alternative minimum tax. The alternative minimum tax is a tax, in addition to the regular income tax, imposed on various tax preference items. The alter-

native minimum tax generally is the amount by which the tentative tax computed under the alternative minimum tax rules exceeds the taxpayer's regular income tax. See sec. 55(a). Congress first enacted a minimum tax in 1969. See Tax Reform Act of 1969, Pub. L. 91-172, sec. 301, 83 Stat. 487, 580-586, 1969-3 C.B. 10, 63-67. The U.S. Court of Appeals for the Ninth Circuit has stated that: "In enacting the minimum tax, Congress attempted to remedy general taxpayer distrust of the system growing from large numbers of taxpayers with large incomes who were yet paying no taxes." *Okin v. Commissioner*, 808 F.2d 1338, 1342 (9th Cir. 1987), appeal dismissed and cert. denied 484 U.S. 802 (1987). See S. Rept. 91-552 (1969), 1969-3 C.B. 423, 495-496.

The alternative minimum tax regime is complicated, and need not be detailed here. For our purposes, it is sufficient to understand certain aspects of computing alternative minimum taxable income.[3] Alternative minimum taxable income is defined in section 55(b). Section 55(b) provides, generally, that an individual's alternative minimum taxable income is determined by adding and subtracting certain sums to and from the taxpayer's adjusted gross income. Specifically, section 55(b)(2) requires the taxpayer's adjusted gross income to be "increased by the amount of items of tax preference." Items of tax preference are listed in section 57(a). For individuals, section 57(a)(9)(A) includes as a tax preference item "an amount

[3] After alternative minimum taxable income is computed, an exemption amount is subtracted from the computed figure. The difference is multiplied by 20 percent and the product is compared with the regular income tax for the taxable year. Any excess of the former over the latter is the alternative minimum tax liability for that year. Sec. 55(a).

equal to the net capital gain deduction for the taxable year determined under section 1202."

Section 1202(a) permits an individual to claim as a deduction from gross income an amount equal to "60 percent of the amount of the net capital gain" for any taxable year. Net capital gain is defined as "the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year." Sec. 1222(11). Net long-term capital gain equals "the excess of long-term capital gains for the taxable year over the long-term capital losses for such year." Sec. 1222(7). Further, long-term capital gain means the "gain from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such gain is taken into account in computing gross income." Sec. 1222(3).

In 1984, petitioners received $337,569 pursuant to the assignment agreement. The parties have stipulated that Baker's gain from the assignment of the Patents was capital gain and that the sum of $337,569 received in 1984 constituted long-term capital gain. This stipulation is consistent with the conclusion reached by respondent in the ruling issued to Baker. As such, the sum of $337,569 needed to be included in the calculations of net long-term capital gain and net capital gain as defined in section 1222(7) and (11). Petitioners properly included the results of those calculations on lines 19 and 20, respectively, of Schedule D of their 1984 return. Section 1202(a) permits petitioners to take a deduction equal to 60 percent of the net capital gain. Accordingly, petitioners claimed for 1984 a net capital gain deduction in the amount of $193,628, as reflected on line 22 of Schedule D to the 1984 return.

Petitioners' net capital gain deduction in the amount of $193,628 constituted for 1984 a tax preference item. See

sec. 57(a)(9)(A). We, thus, are justified in holding petitioners liable for the alternative minimum tax in the amount of $39,609.

Before turning to respondent's determination on additions to tax under section 6653, we feel obligated to state that, while petitioners obviously are very talented people, they have presented several arguments that are difficult to understand. We here try to respond directly to a few of those arguments.

Petitioners seemingly argue that, since the Patents were assigned to the Corporation in 1971, section 55 added to the Internal Revenue Code in the late 1970's did not apply to the installment payments received by Baker in 1984. See Revenue Act of 1978, Pub. L. 95-600, sec. 421(a), 92 Stat. 2763, 2871, 1978-3 C.B. (Vol. 1) 1, 105-111 (adding section 55). Petitioners cite part of the following language from the legislative history of the Revenue Act of 1978 to support their argument:

> In general the provision is effective for taxable years beginning after 1978. * * * Thus, fiscal year taxpayers are to first be subject to the new minimum tax for their taxable year beginning in 1979.
>
> However, the provisions changing the effective date for the preferences for capital gains (to 70 percent of net capital gain) for purposes of the present law minimum tax is to apply for all sales or exchanges taking place after October 31, 1978.
>
> For purposes of both effective dates payments received after the effective date with respect to pre-effective date installment sales are to be taxed under the new provisions applicable generally to sales made after the effective date.

S. Rept. 95-1263 (1978), 1978-3 C.B. (Vol. 1) 315, 505.

Petitioners misread the above language. The first two paragraphs respectively suggest that certain provisions became effective for taxable years beginning in 1979 and that other provisions became effective for sales or exchanges taking place after October 31, 1978. The third paragraph then considers installment payments received after those two effective dates as a result of sales completed before those effective dates. Such installment payments are subject to the provisions that are effective at the time the payments are received, rather than the provisions in effect at the time the sales are made. The quoted language indicates congressional intent that section 55 was to apply to installment payments made after section 55 became effective.

That intent reflects the well-settled principle that installment payments are subject to taxation under the provisions of the law in effect at the time the gain is recognized. *Picchione v. Commissioner*, 440 F.2d 170, 172 (1st Cir. 1971), affg. 54 T.C. 1490 (1970), cert. denied 404 U.S. 828 (1971); *Snell v. Commissioner*, 97 F.2d 891, 893 (5th Cir. 1983); *Estate of Kearns v. Commissioner*, 73 T.C. 1223, 1225 (1980). The fact that section 55 became effective after Baker's patents were assigned in 1971 is irrelevant to whether such section applies to the installment payment that petitioners received in 1984. The U.S. Court of Appeals for the Fifth Circuit described the effect of installment sales as follows:

> As to the instalment sales made in 1923, the taxpayer might have elected to take his whole profit then and have had it taxed under the Revenue Act of 1921. He chose to defer realization of the profits on the deferred instalments. These thereby were left to fall under such provisions of the law as might be of force at their maturity. That the law might be changed, not only in the tax rate but in any other

> of its provisions, was a risk the taxpayer took in deferring the realization of his gains. * * *

Snell v. Commissioner, 97 F.2d 891, 893 (5th Cir. 1938).

In addition, petitioners seemingly are confused also as to what constitutes net long-term capital gain and net capital gain. Petitioners suggest that, since the assignment of the Patents involved no loss that could have been applied against the gain, no net capital gain could have resulted. In contradiction, petitioners also argue that Baker's basis in the Patents was determined by the price for which the Corporation purchased the patents from Baker. Petitioners are incorrect. In fact, sections 1011-1016 determine a taxpayer's adjusted basis in property for the purpose of computing the taxpayer's gain or loss from the sale or other disposition of the property. Section 1012 provides that generally the taxpayer's basis in property is the cost of such property to such taxpayer (i.e., not the purchaser of the property). Section 1001(a) establishes that a taxpayer's gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis. The term "long-term capital gain" in section 1222(3) focuses on a taxpayer's capital gain from a single transaction. The terms "net long-term capital gain" and "net capital gain" in section 1222(7) and (11) concern a taxpayer's net gain from one or more transactions involving capital assets.

Additions to Tax

In the notice of deficiency, respondent determined that, for 1984, petitioners were subject under section 6653(a) to the additions to tax for negligence or intentional disregard of rules or regulations. Petitioners bear the burden of proving that respondent's determination concerning

such additions was erroneous. *Tweeddale v. Commissioner*, 92 T.C. 501, 505 (1989); *Bixby v. Commissioner*, 58 T.C. 757, 791-792 (1972); Rule 142(a). Petitioners' burden of proof is not affected by the fact that the parties submitted this case fully stipulated. *Borchers v. Commissioner*, 95 T.C. ____ (1990), appeal filed October 9, 1990 (8th Cir.); *Service Bolt & Nut Co. Profit Sharing Trust v. Commissioner*, 78 T.C. 812, 819 (1982), affd. 724 F.2d 519 (6th Cir. 1983).

Section 6653(a)(1) imposes an addition to tax equal in amount to 5 percent of the underpayment if any part of the underpayment is due to negligence or intentional disregard of rules or regulations. Section 6653(a)(2) imposes a further addition to tax equal in amount to 50 percent of the interest due on the underpayment of tax attributable to negligence or intentional disregard of rules or regulations. In the context of section 6653(a), negligence has been defined as the lack of due care or failure to do what a reasonable and ordinarily prudent person would do under the circumstances. *Ferrell v. Commissioner*, 90 T.C. 1154, 1201 (1988); *Neely v. Commissioner*, 85 T.C. 934, 947 (1985).

Petitioners have presented no evidence to counter the conclusion that their failure to report an alternative minimum tax for 1984 was due to negligence.[4] Section 57(a)(9)(A) clearly establishes the net capital gain deduction as a tax preference item for the purpose of computing the alternative minimum tax under section 55. In addition, we

[4] We note that, while petitioners' U.S. Individual Income Tax Return for 1984 was prepared professionally, petitioners have presented no evidence to show that the failure to report an alternative minimum tax was due to the negligence of the preparer of the return.

observe that, although petitioners emphasize in their briefs how they carefully followed the instructions in preparing their 1984 return, they left blank line 52 of their return providing for the alternative minimum tax and failed to include Form 6251 showing the results of the computation of their alternative minimum tax. Furthermore, we note that line 22 of Schedule D of the 1984 return states that: "If line 22 is more than zero, [the taxpayer] may be liable for the alternative minimum tax. See Form 6251." Petitioners reported the amount of $193,628 one line 22—an amount considerably larger than zero. Petitioners' apparent failure to take note of the quoted language can be due only to negligence. A reasonable and ordinarily prudent person would have undertaken to determine whether any liability for the alternative minimum tax existed. Such an inquiry here would have produced an affirmative answer.

Under the circumstances, we are impelled to sustain respondent's determination that petitioners' entire underpayment is due to negligence and hold that petitioners are liable under section 6653(a)(1) and (2) for additions to tax.

In light of the foregoing,

Decision will be entered under Rule 155.

APPENDIX D

(Letterhead Of)
INTERNAL REVENUE NATIONAL OFFICE

[*seal*] June 23, 1970 T:I:I:2:3

Mr. George H. Baker
1116 West Pioneer Parkway
Peoria, Illinois 61614

Dear Mr. Baker:

This is in reply to a request for a ruling submitted on your behalf by Arthur Young and Company. A ruling is requested to the effect that (1) you will be permitted to treat the gains derived from the proposed sale and assignment of patents to Baker Drapery Corporation (BDC), if consummated, as gains derived from the sale or exchange of a capital asset reportable as long-term capital gains and (2) that such gains from the proposed sale and assignment may be returned for Federal income tax purposes on the installment method of reporting as provided by section 453 of the Internal Revenue Code of 1954.

The facts submitted pertinent to the proposed transaction are substantially as follows:

It is indicated that you are an inventor and the sole owner of U.S. Patent #3,296,651 issued in 1967 and Canadian Patent #770,972 issued also in 1967. These patents relate to a drapery support and accessories.

The proposed sale of the above patents to B D C (a Delaware corporation) is to a corporation in which you and your wife own 76 percent of the stock and 3¼ percent of the stock is owned by employees of the corporation with the balance owned by unrelated persons.

The proposed assignment between you and B D C provides for you to assign all of your interest in the patents and inventions disclosed therein including the exclusive right to manufacture, use and sell said inventions throughout the world.

As consideration for the proposed transfer B D C agrees to pay you one million dollars ($1,000,000) payable as follows:

> (1) an amount equal to fifteen (15%) of the net selling price of any and all such components sold by it or by its licensees in the event it issues licenses to others.

Net selling price shall be the gross receipts from such sales less credits for returns and transportation or taxes allocable to the purchaser. The agreement provides that in no event shall more than $290,000 be paid in the calendar year ending with the year in which this agreement is executed. So long as any of the purchase price remains outstanding, the annual royalty payment shall not be less than $50,000. If, on expiration of the patents, the earned royalties, which have been paid, do not total $1,000,000 B D C shall pay to you the balance. The unpaid balance shall bear interest at the rate of 4½ percent per annum payable quarterly.

In the event a third party infringes either of the patents to be assigned, B D C has the right to bring suit to enforce the patents. The agreement provides for you to cooperate in the prosecution of such a suit without expense to you. Any amounts recovered as a result of such suit shall be retained by B D C.

The agreement if consummated shall continue for the life of the patents, however, in the event of default, or in the event of a voluntary petition in bankruptcy by B D C, you shall have the right to terminate the agreement, and the patents assigned to B D C shall automatically revert to you.

It is stated that you will not transfer the patent to the corporation until you receive a favorable ruling from this office.

As stated above, the selling price agreed upon between parties to the proposed transaction for the patents is $1,000,000. However, information with the file does not disclose the fair market value of the patents to be sold to B D C. Information furnished indicates that you and your wife own directly or indirectly only 76 percent of all outstanding stock of B D C.

For purposes of this ruling no opinion is expressed as to the value of the patents at the date of sale whether such value is more or less than $1,000,000. No opinion is expressed as to the value of the stock of B D C owned by you as compared to the total value of the outstanding stock of B D C.

Section 1235(d) of the Code provides that subsection (a) of section 1235 shall not apply to any transfer, directly or indirectly, between persons specified within anyone of the paragraphs of section 267(b). Your proposed transfer to B D C in which you own a controlling interest would be a transfer as specified in section 267(b).

Section 1.1235-1(b) of the Income Tax Regulations provides that if a transfer is not one described in section 1.1235 1(a) of the regulations, then section 1235 shall be disregarded in determining whether or not such transfer is the sale or exchange of a capital asset. For example, a transfer by a person other than a holder or a transfer by a holder to a related person is not governed by section 1235.

Section 1221 of the Code defines "capital asset" as property held by the taxpayer, whether or not connected with his trade or business with certain exceptions not here pertinent.

Section 1222(3) of the 1954 Code defines the term "long-term capital gain" as gain from the sale or exchange of a capital asset held for more than 6 months, if and to the

extent each gain is taken into account in computing gross income.

Section 1231(a) of the Code provides that if during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the involuntary conversion of property used in the trade or business and capital assets held for more than 6 months, exceed the recognized losses from such sales, exchanges and conversions, then such gains and losses shall be considered as gains and losses on the sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, the gains and losses shall not be considered as gains and losses from the sales or exchanges of capital assets.

For purposes of section 1231(a), the term "property used in the trade or business" is defined in section 1231(b)(1) of the Code as property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167, which is held for more than 6 months, and which is not held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

In view of the foregoing it is concluded that should the transaction be consummated in accordance with the terms of the proposed assignment agreement, any gain to be realized by you upon the sale of patents will constitute sales of capital assets as provided in section 1221 of the 1954 Code and the gains so realized will constitute long term gains within the meaning of section 1222(3) of the 1954 Code, or will be subject to the treatment provided in section 1231 of the Code.

It is further concluded that the transaction if consummated will constitute a casual disposition of personal property within the meaning of section 453(b) of the 1954 Code. The income from this transaction maybe returned by you on the installment method as provided in section 453(a) of the Code, provided the payments received in the year the transaction is consummated do not exceed 30 per-

cent of the selling price. An election to report on the installment basis must be made by you if you wish to use this method.

No opinion is expressed as to the tax treatment of the transaction under the provisions of any of the other sections of the Code or Regulations which may or may not be applicable thereto or to the tax treatment of any condition existing at the time of, or effects resulting from the transaction which are not specifically covered by the above rulings.

Very truly yours,

/s/ JOHN W. S. LITTLETON
Director, Income Tax Division

APPENDIX E

PATENT ASSIGNMENT
BY
GEORGE H. BAKER, Sr.
TO
BAKER DRAPERY CORPORATION
dated
MAY 26, 1971

ASSIGNMENT AGREEMENT

THIS AGREEMENT is between GEORGE H. BAKER, Sr., of Dunlap, Peoria County, Illinois (hereinafter called BAKER), and BAKER DRAPERY CORPORATION, a corporation of Delaware, having a principal place of business at 1116 West Pioneer Parkway, Peoria, Illinois 61614, (hereinafter called BDC).

WHEREAS, BAKER is the owner of United States patent 3,296,651, its counterpart Canadian patent 770,972, relating to a drapery support; and

WHEREAS, BDC desires to acquire said patents. IT IS, THEREFORE, AGREED AS FOLLOWS:

1. BAKER hereby assigns to BDC said patents and all his interest in the inventions disclosed and claimed therein including the exclusive right to make, use and sell and to license others to make, use and sell said inventions through out the United States and Canada.

2. It is contemplated that BDC may make, manufacture or purchase and sell drapery hanger sections, traverse

or support rods, brackets therefor and sliders particularly adapted for use therewith and a tape or the like with sliders, to be sewn to a drapery panel for connecting the panel with the hanger sections. It is recognized by BDC that the value of these components, whether sold collectively as a package or separately as components, derives from the patents. Accordingly BDC agrees to pay BAKER the sum of One Million Dollars ($1,000,000.00), payable as follows: BDC shall pay to BAKER a royalty equal to fifteen percent (15%) of the net selling price of any and all such components sold by it or by its licensees in the event it issues licenses to others. The net selling price shall be the gross receipts from such sales less credits for returns and transportation or taxes allocable to the purchaser. The unpaid balance of the purchase price shall bear interest at the rate of 4½% per annum payable quarterly. Payments shall be applied first to interest and then to principal. In no event shall more than Two Hundred Ninety Thousand Dollars ($290,000.00) be paid in the calendar year ending with the year in which this agreement is executed. So long as any of the purchase price remains outstanding, the annual royalty payments, including principal and interest shall not be less than Fifty Thousand Dollars ($50,000.00). If, on expiration of the patents, or for any other reason whatsoever, the total payments on the principle do not total One Million Dollars ($1,000,000.00), BDC shall pay BAKER the balance.

3. BDC agrees that it will keep records of the sales of products on which royalty is to be paid, in sufficient detail to enable an accurate determination of the amounts which are due. In the event licenses are issued to others under said patents, such licensees shall be required to keep similar records. BDC will make quarterly reports to BAKER within thirty (30) days after the close of each

calendar quarter, showing the sales by it and its licensees, and the amount due thereon as provided above. Such reports shall be accompanied by payment of the amounts which are due. BDC may not assign or license its rights under this agreement except on the undertaking of the assignee or licensee to accept the obligations hereof.

4. The records kept by BDC and its licensees shall be open to inspection by BAKER or an independent accountant of his selection, during normal business hours.

5. In the event a third party infringes either of the patents assigned hereunder, BDC shall bring suit to enforce the patents. BAKER agrees to cooperate in the prosecution of such a suit, but without expense to him. BAKER may be represented in such suit by his own counsel, at his expense. Any net amounts recovered as a result of such suit shall be retained by BDC subject to said royalty payments.

6. Any claim or suit for infringement of patents of others by virtue of making, or of the manufacture, use or sale of the products hereunder shall be answered or defended by BDC without expense or liability to BAKER.

7. BDC agrees to mark the various products sold hereunder with the numbers of said patents, where appropriate, in order to preserve any claim for damages by virtue of infringement of others.

8. In the event of breach, or default, of the payment provisions of this Agreement by BDC, BAKER shall give written notice to each Officer and Director by registered mail specifying the breach or default. If the breach or default has not been rectified within ninety (90) days of receipt of said notice, BAKER has the option to terminate this agreement.

9. Waiver of a claim for breach or default of the Agreement by BAKER, through inaction or otherwise, shall not constitute a precedent nor limit the right of BAKER to enforce the Agreement with respect to a subsequent breach of the same or another character.

10. In the event BDC should file a voluntary petition in bankruptcy or be adjudged a bankrupt or make an assignment for the benefit of creditors, prior to making all payments provided for in Paragraph 2, this Agreement shall terminate.

11. Upon termination of this Agreement as provided in paragraphs 8 or 10, the patents assigned hereunder shall automatically revert to BAKER. BDC agrees to execute all documents necessary to record such reversion with respect to said patents.

12. It is agreed between the parties hereto that this Agreement may not be altered, modified, amended, changed, or extended except in writing signed by both parties, and any attempt or claimed attempt to do so orally or by conduct of either or both parties or otherwise shall be null and void and of no effect whatsoever.

13. Unless terminated sooner as provided herein, this Agreement shall continue for the life of said patents, and with respect to the recovery of damages for infringement, for so long thereafter as a suit may be prosecuted against an infringer.

14. BDC agrees to reimburse BAKER for any and all legal fees, court costs and expenses BAKER may pay or become liable for in enforcing the performance of this Agreement.

15. This Agreement shall be binding upon the heirs, legatees, personal representatives, assignees and successors of the parties hereto.

16. Executed in Triplicate Originals below and on the front sheet hereof with one Original delivered to GEORGE H. BAKER, Sr., of Dunlap, Peoria County, Illinois, one Original delivered to BAKER DRAPERY CORPORATION with its principle place of business presently at 1116 West Pioneer Parkway, Peoria, Illinois, and one Original delivered to Attorney Richard S. Phillips for the law firm of Hofgren, Wegner, Allen, Stellman & McCord of 20 North Wacker Drive, Chicago, Illinois, and there being no more copies hereof and the plates for the printing hereof having been destroyed, this 26th DAY of MAY, A.D., 1971.

/s/ GEORGE H. BAKER, SR. (Seal)
George H. Baker, Sr.

BAKER DRAPERY CORPORATION
By /s/ LESTER L. DICKINSON

STATE OF ILLINOIS
COUNTY OF PEORIA – SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that GEORGE H. BAKER, Sr., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the above agreement as stated as his free and voluntary act, for the uses and purposes therein set forth, and he acknowledges receipt of one duplicate original of this agreement.

Given under my hand and Notarial Seal, this 26th day of May, A.D., 1971.

/s/ _____
Notary Public

STATE OF ILLINOIS
COUNTY OF PEORIA – SS

I, the undersigned, a Notary Public in said County do hereby certify that LESTER L. DICKINSON, Vice President and ALFRED A. ANSTETT, Assistant Secretary, of BAKER DRAPERY CORPORATION, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said corporation for the uses and purposes therein set forth, pursuant to authority given by the Board of Directors of said corporation and caused the corporate seal of said corporation to be thereto affixed, and acknowledge receipt of one duplicate original of this agreement for said corporation.

Given under my hand and Notarial Seal this 26th day of May, A.D., 1971.

/s/ _____
Notary Public

I hereby acknowledge receipt of
one duplicate original of this agreement.

/s/ RICHARD S. PHILLIPS
Richard S. Phillips for the firm of
Hofgren, Wegner, Allen, Stellman & McCord

APPENDIX F

PUBLIC LAW 95-600
92 STAT. 2872

"SEC. 55. ALTERNATIVE MINIMUM TAX FOR TAXPAYERS OTHER THAN CORPORATIONS.

"(a) ALTERNATIVE MINIMUM TAX IMPOSED.—In the case of a taxpayer other than a corporation, if—

"(1) an amount equal to the sum of—

"(A) 10 percent of so much of the alternative minimum taxable income as exceeds $20,000 but does not exceed $60,000 plus

"(B) 20 percent of so much of the alternative minimum taxable income as exceeds $60,000 but does not exceed $100,000, plus

"(C) 25 percent of so much of the alternative minimum taxable income as exceeds $100,000, exceeds

"(2) the regular tax for the taxable year, then there is imposed (in addition to all other taxes imposed by this title) a tax equal to the amount of such excess.

"(b) DEFINITIONS.—For purposes of this section—

"(1) ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'alternative minimum taxable income' means gross income—

"(A) reduced by the sum of the deductions allowed for the taxable year,

"(B) reduced by the sum of any amounts included in income under section 667, and

"(C) increased by an amount equal to the sum of the tax preference items for—

"(i) adjusted itemized deductions (within the meaning of section 57(a)(1)), and

"(ii) capital gains (within the meaning of section 57(a)(9)).

"(2) REGULAR TAX.—The term 'regular tax' means the taxes imposed by this chapter for the taxable year (computed without regard to this section and without regard to the taxes imposed by sections 72 (m)(5)(B), 402(e), 408(f), and 667(b)) reduced by the sum of the credits allowable under subpart A of part IV of this subchapter (other than under sections 31, 39 and 43).

"(c) CREDITS.—

"(1) CREDITS OTHER THAN THE FOREIGN TAX CREDIT NOT ALLOWABLE.—For purposes of determining the amount of any credit allowable under subpart A of part IV of this subchapter (other than the foreign tax credit allowed under section 33(a)), the tax imposed by this section shall not be treated as a tax imposed by this chapter.

"(2) FOREIGN TAX CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—The total amount of the foreign tax credit which can be taken against the tax imposed by subsection (a) shall be determined under section 901 and sections 903 through 908. For purposes of this determination—

"(A) the amount of taxes paid or accrued to foreign countries or possessions of the United Sates in the taxable year shall be deemed to include an amount equal to the lesser of (i) the foreign tax credit allowed under section 33(a) in computing the regular tax for the taxable year, or (ii) the tax imposed under subsection (a);

"(B) the limitation of section 904(a) shall be an amount equal to the same proportion of the

sum of the tax imposed by this section against which such credit is taken and the regular tax (excluding the tax imposed by section 56) which the taxpayer's alternative minimum taxable income from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income) bears to his entire alternative minimum taxable income for the same taxable year. For purposes of the preceding sentence, the entire alternative minimum taxable income shall be reduced by an amount equal to the zero bracket amount;

"(C) the term 'alternative minimum taxable income from sources without United States' means the excess of the items of gross income from sources without the United States over that portion of the deductions taken into account in computing alternative minimum taxable income which are deducted from those items of gross income in computing taxable income from sources without the United States; for purposes of this subparagraph, and except as provided in section 904, gross and taxable income from sources without the United States shall be determined under part I of subchapter N of chapter 1; and

"(D) the amount of foreign taxes paid during the taxable year which may be deemed to be paid in a preceding or succeeding year under section 904(c), the limitation of section 904(a) shall be increased by the lesser of (i) the amount described in subparagraph (B) or (ii) the tax imposed under subsection (a).

"(3) CARRYOVER AND CARRYBACK OF CERTAIN CREDITS.—In any taxable year in which a tax is im-

posed by this section (referred to as the current taxable year)—

"(A) EMPLOYMENT CREDIT.—For purposes of determining under section 53(c) the amount of any jobs credit carryback or carryover to any other taxable year, the amount of the limitation under section 53(a) for the current taxable year shall be deemed to be—

"(i) the amount of the credit allowable under section 44B for the current taxable year without regard to this subparagraph, reduced by

"(ii) the amount equal to the lesser of (I) the amount of the credit allowable under section 44B for the current taxable year without regard to this subparagraph, or (II) the next tax imposed by this section for the current taxable year.

"(B) WORK INCENTIVE PROGRAM CREDIT.—For purposes of determining under section 50A(b) the amount of any work incentive program credit carryback or carryover to any other taxable year, the amount of the limitation under section 50A(a)(2) for the current taxable year shall be deemed to be—

"(i) the amount of the credit allowable under section 40 for the current taxable year without regard to this subparagraph, reduced by

"(ii) the amount equal to the lesser of (I) the amount of the credit allowable under section 40 for the current taxable year without regard to this subparagraph, or, (II) the net tax imposed by this section for the current taxable year reduced by the amount

of reduction described in clause (ii) of subparagraph (A).

"(C) INVESTMENT CREDIT.—For purposes of determining under section 46(b) the amount of any investment credit carryback or carryover to any other taxable year, the amount of the limitation under section 46(a)(3) for the current taxable year shall be deemed to be

"(i) the amount of the credit allowable under section 38 for the current taxable year without regard to this subparagraph, reduced by

"(ii) the amount equal to the lesser of (I) the amount of the credit allowable under section 38 for the current taxable year without regard to this subparagraph or (II) the net tax imposed by this section for the current taxable year reduced by the sum of the amounts of reduction described in clause (ii) of subparagraphs (A) and (B).

"(D) NET TAX IMPOSED BY THIS SECTION.—For purposes of this paragraph, the term 'net tax imposed by this section' means the tax imposed by this section reduced by the foreign tax credit allowed under section 33(a), as modified by paragraph (2).

(b) AMENDMENT OF SECTION 57.—Section 57 (relating to items of tax preference) is amended—

(1) by adding the following at the end of paragraph (9) subsection (a):

"(D) PRINCIPAL RESIDENCE.—For purposes of subparagraph (A), gain from the sale or exchange of a principal residence (within the meaning of section 1034) shall not be taken into account.",

(2) by striking out the last sentence of subsection (a) and inserting in lieu thereof the following: "Paragraphs (3) and (11) shall not apply to a corporation other than an electing small business corporation (as defined in section 1371 (b)) and a personal holding company (as defined in section 542). For purposes of section 56, in the case of a taxpayer other than a corporation, the adjusted itemized deductions described in paragraph (1) and capital gains described in paragraph (9) shall not be treated as items of tax preference."

(3) by striking out subsection (b)(1) and inserting the following in lieu thereof:

"(1) IN GENERAL.—For purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the itemized deductions (as defined in section 63(f)) other than—

"(A) the deduction for State and local taxes provided by section 164(a),

"(B) the deduction for medical, dental, etc., expenses provided by section 213,

"(C) the deduction for casualty losses described in section 165(c)(3), and

"(D) the deduction allowable under section 691(c), exceeds 60 percent of the taxpayer's adjusted gross income reduced by the items in subparagraphs (A) through (D) for the taxable year.", and

(4) by striking out subparagraph (A) of subsection (b)(2), as amended by section 701 of this Act, and inserting in lieu thereof the following:

"(A) IN GENERAL.—In the case of an estate or trust, for purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized

deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than—

"(i) the deductions allowable in arriving at adjusted gross income,

"(ii) the deduction for personal exemption provided by section 642(b),

"(iii) the deduction for casualty losses described in section 165(c)(3),

"(iv) the deductions allowable under section 651(a), 661(a), or 691(c),

"(v) the deduction for State and local taxes provided by section 164(a), and

"(vi) the deductions allowable to a trust under section 642(c) to the extent that a corresponding amount is included in the gross income of the beneficiary under section 662 (a)(1) for the taxable year of the beneficiary with which or within which the taxable year of the trust ends,

exceeds 60 percent of the adjusted gross income reduced by the items in clauses (i) through (vi) for the taxable year."

(c) AMENDMENTS OF SECTION 58.—Section 58 (relating to rules for application of part) is amended—

(1) by adding at the end of subsection (a) the following new sentence: "In the case of a married individual who files a separate return for the taxable year, the amount determined under paragraph (1) of section 55(a) shall be an amount equal to one-half of the amount which would be determined under such paragraph if the amount of the individual's alternative minimum taxable income were multiplied by 2.";

(2) by amending subsection (c) to read as follows:

"(c) ESTATES AND TRUSTS.—In the case of an estate or trust—

"(1) the sum of the items of tax preference for any taxable year of the estate or trust shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each,

"(2) the $10,000 amount specified in section 56 applicable to such estate or trust shall be reduced to an amount which bears the same ratio to $10,000 as the portion of the sum of the items of tax preference allocated to the estate or trust under paragraph (1) bears to such sum, and

"(3) the liability for the tax imposed by section 55 (a) shall be determined as in the case of a married individual filing separately.", and

(3) by deleting subsection (i) (relating to the definition of corporation).

(d) TAXES TAKEN INTO ACCOUNT IN CASE OF ACCUMULATION DISTRIBUTIONS BY TRUSTS.—The second sentence of section 666(b) (relating to total taxes deemed distributed) is amended by striking out "taxes" and inserting in lieu thereof "taxes (other than the tax imposed by section 55)".

(e) TECHNICAL AMENDMENTS.—

(1) Paragraph (4) of section (5)(a) (as redesignated by section 401 of this Act) (relating to cross references relating to tax on individuals) is amended to read as follows:

"(4) For minimum tax for taxpayers other than corporations, see section 55.".

(2) Subsection (d) of section 443 (relating to adjustment in computing minimum tax for short periods) is amended as follows:

"(d) ADJUSTMENT IN COMPUTING MINIMUM TAX FOR TAX PREFERENCES.—If a return is made for a short period by reason of subsection (a), then—

"(1) in the case of a taxpayer other than a corporation, the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying that amount by 12 and dividing the result by the number of months in the short period, and the amount computed under paragraph (1) of section 55(a) shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months; and

"(2) in the case of a corporation, the $10,000 amount specified in section 56 (relating to minimum tax for tax preferences), modified as provided by section 58, shall be reduced to the amount which bears the same ratio to such specified amount as the number of days in the short period bears to 365.".

(3) Subsection (d) of section 511 (relating to tax preferences) is amended to read as follows:

"(d) TAX PREFERENCES.—

"(1) ORGANIZATIONS TAXABLE AT CORPORATE RATES.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (a), the tax imposed by section 56 shall apply to such organizations with respect to items of tax preference which enter into the computation of unrelated business taxable income in the same manner as section 56 applies to corporations.

"(2) ORGANIZATIONS TAXABLE AS TRUSTS.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (b), the taxes imposed by section 55 and section 56 (as the case may be) shall apply to such organization with respect to

items of tax preference which enter into the computation of unrelated business taxable income."

(4) Paragraph (1) of section 871(b) (relating to tax on nonresident alien individuals) is amended by inserting ", section 55," after "section 1".

(5) Subsection (b) of section 877 (relating to expatriation to avoid tax) is amended by inserting ", section 55," after "section 1".

(6) Section 904(h) (relating to cross references) is amended to read as follows:

"(h) CROSS REFERENCES.—

"(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

"(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken by an individual against the alternative minimum tax, see section 55(c).".

(7) Paragraph (1) of section 6015(c) (defining estimated tax) is amended by striking out "section 56" and inserting in lieu thereof "section 55 or 56".

(8) Subparagraph (A) of section 6362(b) (relating to qualified individual income taxes) is amended by striking out "section 56" and inserting in lieu thereof "section 55 or 56".

(9) Paragraph (1) of section 6654(f) (relating to tax computed after applications of credit against tax) is amended by striking out "section 56" and inserting in lieu thereof "section 55 or 56".

(f) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter A of chapter 1 is amended by adding at the beginning thereof the following new item:

"Sec. 55. Alternative Minimum Tax for Taxpayers other than Corporations.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1978, except that the amendment made by paragraph (1) of subsection (b) shall apply to sales and exchanges made after July 26, 1978, in taxable years ending after such date.